



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Wilshire Foam Products, Inc.--Request for  
Reconsideration

**File:** B-234628.2

**Date:** June 5, 1989

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### **DIGEST**

General Accounting Office will not consider a protest of the decision of an agency to acquire raw material from a manufacturer and supply it to a section 8(a) concern for fabrication into the finished item, where the basic complaint of the protester, who fabricates the finished item, but does not manufacture the raw material, concerns the 8(a) set-aside decision and the protester has not shown fraud or bad faith on the part of government officials.

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### **DECISION**

Wilshire Foam Products, Inc., request reconsideration of our decision in Wilshire Foam Products, Inc., B-234628, Apr. 20, 1989, 89-1 CPD ¶ \_\_\_\_\_, dismissing Wilshire's protest of the Air Force's decision to set aside a requirement under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), for fuel foam kits for use in the fuel cells in A-10 aircraft.

We deny the request for reconsideration.

As outlined in our prior decision, the foam kits are fabricated by first acquiring the bulk fuel foam from a foam manufacturer and then fabricating and cutting this foam into kits. The Air Force chose to competitively acquire the foam from qualified vendors and provide this foam to an 8(a) contractor, who would perform the fabrication work. Wilshire's protest is that the Air Force's acquisition strategy was defective and not in the government's best interest, since it was not economical and because it did not consider the various sophisticated technical concerns in fabricating the kits, the adverse impact on qualified small businesses who fabricate these kits and the reservations and concerns of foam manufacturers about an unqualified firm improperly fabricating the kits from foam which those manufacturers have supplied.

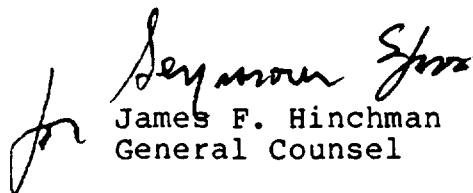
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The record indicates that while the Air Force was formulating its business strategy, Wilshire, who is not a manufacturer of the foam, submitted an unsolicited offer to fabricate the kits, either with the government acquiring and supplying the foam or by Wilshire acquiring the foam. Later Wilshire offered to participate in a competitive requirement for this requirement. That is, if Wilshire were successful in its protest, it would offer to perform this work instead of the 8(a) contractor.

We found that the essence of Wilshire's protest was against the Air Force decision to set aside for an 8(a) contractor the requirement for fabricating the foam kits. Because of the broad discretion afforded the Small Business Administration and the contracting agencies under applicable statutes and regulations, we have limited our review of actions under the section 8(a) program to determining whether the 8(a) regulations have been followed and whether there has been a showing of bad faith or fraud on the part of the government officials. Since the protester made no such showing, we dismissed the protest.

On reconsideration, Wilshire claims we mischaracterized its protest in that its protest concerned the "threshold" issue of the agency's "procurement strategy" and not a challenge to the decision to set aside this requirement for an 8(a) concern. Consequently, Wilshire claims that it is entitled to a decision as to whether the Air Force had a reasonable basis for its procurement strategy.

While Wilshire has provided detailed arguments about the alleged errors, failures and bad judgments in the Air Force decision to separately acquire the foam from a manufacturer and to provide it to an 8(a) contractor to fabricate the kits, we find that Wilshire's basic complaint about this strategy is that an 8(a) concern will be performing the work, while Wilshire believes the fabrication requirement should be competed separately or in combination with the foam requirement. Since there is no claim, much less a showing, of fraud or bad faith, we deny Wilshire's request for reconsideration.

  
James F. Hinchman  
General Counsel